

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

STEVEN FERDMAN,

Plaintiff,

- against -

COX MEDIA GROUP, LLC,

Defendant.

Docket No. 17-cv-03209

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Steven Ferdman (“Ferdman” or “Plaintiff”), by and through his undersigned counsel, as and for his Complaint against Defendant Cox Media Group, LLC (“Cox” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photograph of actor Tom Holland as Spiderman, owned and registered by Ferdman, a New York City-based photojournalist. Accordingly, Ferdman seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.* This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or is doing business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Ferdman is a professional photojournalist in the business of licensing his photographs to online, print, and television stations for a fee, having a usual place of business at 201 West 72nd Street, Apt. 18E, New York, New York 10023. Ferdman's photographs have appeared in many publications around the United States.

6. Upon information and belief, Cox is a limited liability company duly organized and existing under the laws of the State of Delaware, with a place of business at 555 Sunrise Highway, West Babylon, New York 11704. At all times material hereto, Cox has owned and operated two (2) websites at the URLs www.news965.com (hereafter "News 965") and www.buzz.blog.ajc.com (hereafter "AJC.com" and, together with News 965, the "Websites").

STATEMENT OF FACTS

A. Background and Plaintiff's Ownership of the Photograph

7. On September 26, 2016, Ferdman photographed actor Tom Holland as Spiderman on set (the "Photograph"). A true and correct copy of the Photograph is attached hereto as Exhibit A.

8. Ferdman is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

9. The Photograph was registered with the U.S. Copyright Office and was given Copyright Registration Number VA 2-022-430.

B. Defendant's Infringing Activities

10. On October 4, 2016, Cox ran an article on AJC.com entitled "*Spiderman-Man: Homecoming*" is now done filming, star Tom Holland says. See <http://buzz.blog.ajc.com/2016/10/04/spider-man-homecoming-is-now-done-filming-star-tom-holland-says/>. On December 9, 2016, Cox ran another article on News 965 entitled *MARVEL REVEALS FIRST OFFICIAL TRAILER FOR SPIDER-MAN: HOMECOMING*. See <http://www.news965.com/news/local/marvel-reveals-first-official-trailer-for-spider-man-homecoming/aG2CLPZ81kIPD9CiFCNivJ/>. The articles prominently featured the Photograph. True and correct copies of the articles are attached hereto as Exhibit B.

11. Cox did not license the Photograph from Plaintiff for its articles, nor did Cox have Plaintiff's permission or consent to publish the Photograph on its Websites.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST COX)
(17 U.S.C. §§ 106, 501)

12. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-11 above.

13. Cox infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on its Websites. Cox is not, and has never been, licensed or otherwise authorized to reproduce, publicly display, distribute and/or use the Photograph.

14. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

15. Upon information and belief, the aforementioned acts of infringement by Cox have been willful, intentional, and purposeful, in disregard of and with indifference to Plaintiff's rights.

16. As a result of Defendant's infringement of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to recover his damages and Defendant's profits pursuant to 17 U.S.C. § 504(b).

17. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendant's willful infringement of the Photograph, pursuant to 17 U.S.C. § 504(c).

18. Plaintiff further is entitled to recover his attorney's fees and full costs pursuant to 17 U.S.C. § 505.

19. Defendant's conduct, described above, is causing and, unless enjoined and restrained by this Court, will continue to cause Plaintiff irreparable injury that cannot be fully compensated by or measured in money damages. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Cox be adjudged to have infringed upon Plaintiff's copyright in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. That Plaintiff be awarded either: a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;

4. That Plaintiff be awarded his costs, expenses and attorney's fees pursuant to 17 U.S.C. § 505;
5. That Plaintiff be awarded pre-judgment interest; and
6. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: May 2, 2017
Valley Stream, New York

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